Appendix A.

§400. (Judicial Code section 274d). Declaratory Judgments authorized; procedure.

(1) In cases of actual controversy except with respect to Federal taxes the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not.

Appendix B.

LETTER, EX. A, R. 25

March 20, 1940.

Creamery Package Mfg. Co.
Chicago, Illinois

Gentlemen:

I am enclosing herewith two copies of Reissue patent, Re. 21,406, issued to The Girdler Corporation on March which was defended by you.

19, 1940, to replace the Vogt Patent No. 1,783,864 which was involved in the suit against Abbotts Dairies, Inc.

As the Court held that claims 3 and 5 of that patent would be infringed, if valid, but were too broad or indefinite to properly define over Meisenhelter, the patent has been reissued to limit the claims so as to clearly define over Meisenhelter. New claims 1, 2 and 3 which replace original claims 3 and 5 are believed to be clearly infringed by the CP freezer.

The purpose of this letter is to notify you of the grant of the Reissue patent and your infringement thereof, and to specifically notify you that unless infringement ceases, it will be necessary to take legal action.

Very truly yours,

(signed) C. W. FAIRBANK.

CWF:ES
Enc.

LETTER, EX. C, R. 27

March 22, 1940
WLC-MM

Mr. George E. Wallis
Creamery Package Mfg. Company,
1243 W. Washington Boulevard
Chicago, Illinois

Dear Mr. Wallis:

In today's mail I have received copy of letter written to you, dated March 20th, by Mr. C. W. Fairbank, Attorney for The Girdler Corporation. This letter refers to Reissue Patent Re. 21,406.

I would like it very much if some way could be found to adjust our differences. Lawsuits are very expensive and very annoying.

It seems to me that it might be possible to work out some type of plan that would make our license with The Girdler Corporation nonexclusive, and provide for a license to your Company. If something of this kind could be done, it seems to me that there might be great advantages to all concerned.

If you are interested in this suggestion, I would be very glad, at the very earliest opportunity, to meet with you in the hope that some progress towards a solution of this problem can be quickly worked out.

Yours very truly,

(Signed) W. L. CHERRY
President

LETTER, EX. B, R. 26

March 25, 1940

Dean, Fairbank & Hirsch
420 Lexington Avenue
New York, N. Y.

Attention Mr. C. W. Fairbank,

Dear Sir:

This will acknowledge your letter of March 20, relating to the reissue patent No. 21406, which I find awaiting my return to the office this morning.

I also have a letter from Mr. W. L. Cherry, dated March 22, and which relates to the same subject matter.

I will communicate further with Mr. Cherry within the next few days in response to the suggestions made in his letter concerning this matter.

Yours very truly,

THE CREAMERY PACKAGE MFG. COMPANY
(Sgd.) G. E. WALLIS
President and General Manager

GEW:MLD

LETTER, EX. D, R. 27

Chicago, Illinois
March 25, 1940

Mr. W. L. Cherry, President
Cherry-Burrell Corporation
427 West Randolph Street
Chicago, Illinois

Dear Mr. Cherry:

I find your letter of March 22, and also Mr. Fairbank's letter of March 20 awaiting my return to the office this morning. This present development of the continuous ice cream freezer litigation is a surprise to me and naturally I wish to discuss it with our people. I will communicate further with you in the matter within the next few days.

Yours very truly,

THE CREAMERY PACKAGE MFG. COMPANY
(sgd) G. E. Wallis
President and General Manager

GEW:MLD

Appendix C.

Title 35. Patents. §49. Patented articles marked as such; notice of infringement. It shall be the duty of all patentees and their assigns and legal representatives, and of all persons making or vending any patented article for or under them, to give sufficient notice to the public that the same is patented; either by fixing thereon the word "patent", together with the number of the patent, or when, from the character of the article, this cannot be done, by fixing to it, or to the package wherein one or more of them is inclosed, a label containing the like notice: *Provided, however*, That with respect to any patent issued prior to April 1, 1927, it shall be sufficient to give such notice in the form following, viz: "Patented", together with the day and year the patent was granted; and in any suit for infringement by the party failing so to mark, no damages shall be recovered by the plaintiff, except on proof that the defendant was duly notified of the infringement and continued, after such notice, to make, use, or vend the article so patented. (R.S. §4900; Feb. 7, 1927, c. 67, 44 Stat. 1058.)